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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/836,995	04/18/2001	James F. Lee	0506-4021	7656

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EXAMINER

COCKS, JOSIAH C

ART UNIT	PAPER NUMBER
3743	

DATE MAILED: 07/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/836,995	LEE, JAMES F.
	Examiner	Art Unit
	Josiah C. Cocks	3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 18 April 2001.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-13 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 03 July 2001 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a)  The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4 .	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION**

*Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the starter material of claim 11 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

*Specification*

2. The disclosure is objected to because of the following informalities:

On page 5, line 25, it appears “upper cage member 130” should read --upper cage member 160--.

On page 8, line 23, it appears “cage member 150” should read --cage member 160--. Appropriate correction is required.

*Claim Objections*

3. Claims 1-10, 12, and 13 are objected to because of the following informalities:

In claim 1, line 2, “grate member” should read --grate members--.

In claim 3, line 2, and in claim 13, line 4 the term “hingeably” is grammatically incorrect. The examiner suggests, in both of these claims, replacing the phrase “hingeably attached” with the term --hinged--.

In claim 8, line 2, and in claim 9, line 2, the term “hingeable” is grammatically incorrect. The examiner suggests, in both of these claims, replacing the term “hingeable” with the term --hinged--.

In claim 8, line 1, the term --removable-- has been misspelled “removeable”.

In claim 12, line 4, the term “pivotably” is grammatically incorrect. The examiner suggests the term “pivotally” is the generally accepted and grammatically correct adverb form of “pivot”.

Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 7, the limitation “further comprising a plurality of compartments for firelog defined by the frame” is indefinite, as it is not clear what structure “firelog defined by the frame” represents. For the purpose of an examination on the merits, the examiner has treated this

limitation as reciting --further comprising a plurality of compartments defined by the frame for holding a plurality of firelogs--.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 2, 7, 8, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by *Gerrard* (US # 5,435,295).

*Gerrard* discloses in Figures 1-4 a fireplace grate comprising a frame (1) including a plurality of grate members (5), a base (2), and an upper frame/cage member (3) wherein the grate members define a compartment to hold a firelog (34) (see area defined by support members (10) and (11) and Figs. 2 and 4). *Gerrard* further discloses that ceramic logs (31, 32, and 33) are placed on top of the frame and direct contact is prevented between the firelog and the ceramic logs (see Fig. 4).

In regard to claim 7, *Gerrard* discloses that additional support bars may be added as desired to provide support for additional firelogs (see col. 2, lines 22-24). The examiner regards the disclosure of the additional support for additional firelogs to be the structural equivalent of additional compartments.

In regard to claim 8, *Gerrard* discloses that a poker may be used to open the upper frame/cage member (3) by placing the end of the poker in a V-notch (28) formed in a front protector bar (27) and pivoting the upper frame/cage member (3) away from the base (2) (see col. 2, lines 57-61). The examiner regards this disclosure of the poker and its function as the equivalent of a removable handle for moving the hingeable cage member as recited in claim 8.

In regard to claim 12, *Gerrard* discloses that at least one ceramic log (any one of 31, 32, and 33) is secured to the upper frame/cage member (3) by means of pins (25 and 26) wherein the frame/cage member (3) is attached to the frame (1) by pivot arms (17) such that the ceramic logs may be pivoted between a first position which allows firelogs to be placed on the base (see col. 1, lines 33-35) and a second position which prevents direct contact between the firelog and the ceramic logs on top of the frame (see Fig. 4).

8. Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by *Eyges* (US # 3,670,714).

*Eyges* discloses in Figures 1-8 a fireplace grate comprising a frame including a plurality of grate members in the form of rings (53 and 54) connected by bars (55) (see col. 2, lines 62-68) wherein the grate members define a compartment (see Fig. 4 and space within rings 53 and 54) to hold a starter material (see rolled newspaper 31) and direct contact is prevented between the starter material and wood logs (42) placed on top of the frame (see Fig. 4).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 3, 4, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Gerrard* as applied to claim 2 above and further in view of *Kutchera* (US # 2,519,482).

*Gerrard* discloses all the limitations of claims 3, 4, and, 13 except that the fireplace grate of *Gerrard* is explicitly “hingeably attached” to the base, that the grate members include a U-shaped portion for supporting the firelog, and the ceramic log is explicitly “hingeably attached” to the frame.

In regard to claims 3 and 13, *Gerrard* discloses that the upper frame/cage member (3) is pivotally connected to the base (2) (see col. 1, lines 61-62) by pivot means (9) such that this upper frame/cage member may be pivoted away from the base. *Kutchera* teaches that in the fireplace grate art, for grate sections (11) that are pivotally mounted (see col. 3, lines 23-25) the term “hinge” and “pivot” are understood to be equivalent terms for describing structure which permits the grate sections to swing from a first position to a second position (see col. 3, lines 33-35 and col. 4, lines 8-11). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made that the pivotal attachment of the upper frame/cage member of *Gerrard* would be regarded as “hingeably attached”, as *Kutchera* teaches that a pivot means is the equivalent of a hinge means.

In regard to claim 4, *Kutchera* discloses grate sections (11) having bars (12) that are substantially U-shaped and serve as a fuel support (see Fig. 1 and col. 3, lines 7-14). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the firelog support of *Gerrard* to incorporate the U-shaped support of *Kutchera* for the purpose of forming a grate that supports a fuel support in a configuration such that as the fuel is burned ashes collect beneath the grate on a fireplace floor (see *Kutchera*, col. 3, lines 61-64).

11. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Gerrard* as applied to claim 2 above, and further in view of *Thompson* (US # 4,360,001).

*Gerrard* discloses all of the limitations of claim 5 except that the grate members include a V-shaped portion for supporting the firelog.

*Thompson* teaches a log support (21) for a fireplace grate wherein the log support is V-shaped (see Fig. 4).

Therefore, in regard to claim 5, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the firelog support of *Gerrard* to incorporate the V-shaped support of *Thompson* for the desirable purpose of forming a fuel support which creates a desirable draft space for the ignition and maintenance of a log fire (see *Thompson*, col. 1 line 68 through col. 2, line 2).

12. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Gerrard* as applied to claim 1 above, and further in view of *Dotson et al.* (US # 4,692,168).

*Gerrard* discloses all the limitations of claim 6 except that the firelog is a gel log.

*Dotson et al.* teaches that it is well known in the art that a starting log/firelog for a fireplace may comprise gelled fuel (see col. 3, lines 24-37). The examiner regards a firelog composed of a gelled fuel to constitute a “gel log” as claimed.

Therefore, in regard to claim 6, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the firelog of *Gerrard* to be formed from a gelled fuel as taught by *Dotson et al.* as gelled fuels provide increased heat, increased luminosity and improved safety (see *Dotson et al.*, col. 1, lines 47-49).

13. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Gerrard* as applied to claim 2 above, and further in view of *Fischer* (US # 4,838,781) and *Kutchera* (US # 2,519,482).

*Gerrard* discloses all the limitations of claim 9 except possibly that the upper cage member includes a hingeable door.

*Fischer* teaches a fireplace grate having an upper grate/cage member (11) and a base (13) wherein the upper grate/cage member is pivotally mounted about a front portion of the base (see Fig. 4 and col. 3, lines 52-54). The examiner regards the grate portion that is pivoted forwardly to constitute a pivotable door. Further, in view of the teaching of *Kutchera* that in the fireplace grate art, for grate sections (11) that are pivotally mounted (see col. 3, lines 23-25) the term “hinge” and “pivot” are understood to be equivalent terms (see col. 3, lines 33-35 and col. 4, lines 8-11), the examiner regards the pivotable door of *Fischer* to constitute a hingeable door as claimed.

Therefore, in regard to claim 9, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the upper frame/cage member of *Gerrard* to incorporate the hingeable door with forward pivoting of *Fischer* for the desirable purpose of allowing easy replacement and ignition of a fuel source (see *Fischer*, col. 2, lines 63-68).

14. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Gerrard* as applied to claim 1 and further in view of *Betenbaugh* (US # 4,257,392).

*Gerrard* discloses all the limitations of claim 10 except that the firelog is supported by at least four grate members of the frame.

*Betenbaugh* teaches a fireplace grate having grate members (13) forming a log support portion which incorporates at least four grate members (see Fig. 1 showing 11 grate members).

Therefore, in regard to claim 10, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the grate of *Gerrard* to incorporate the support having at least four grate members as taught by *Betenbaugh* as a plurality of grate members are selected to define a generally horizontally extending platform for supporting combustible logs thereon (see *Betenbaugh*, col. 2, lines 29-32).

### *Conclusion*

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. GB 0011447, *Ford, Love*, and *Haynes et al.* are included to further show the state of

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the art concerning fireplace grates with pivoted or hinged portions. FR 2 380 498 and *Whitehead* are included to further show the state of the art concerning log positions in fireplace grates.

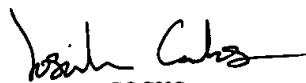
16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (703) 305-0450. The examiner can normally be reached on weekdays from 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett, can be reached at (703) 308-0101. The fax phone numbers for this Group are (703) 308-7764 for regular communications and (703) 305-3463 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

jcc

*jn*  
July 24, 2002

  
JOSIAH COCKS  
PATENT EXAMINER  
ART UNIT 3743